



Nevada Department of Corrections

Leading Nevada Corrections Into the Future

Constitutional Rights of Inmates

INSTRUCTIONAL GOAL:

The Nevada Department of Corrections manages and supervises thousands of inmates daily. Staff members must understand that inmates are not stripped of all of their constitutional rights upon incarceration. This training segment addresses various constitutional rights afforded inmates such as access to the courts, communications, religious freedom, unreasonable search and seizure, prohibition of cruel and unusual punishment and due process.

INSTRUCTIONAL OBJECTIVES:

The objectives of this workshop are to enable the participants to:

1. Identify the access to courts as it relates to constitutional rights of inmates
2. Identify when an inmates right to freedom of speech and freedom of religion can be restricted
3. Identify if the U.S. Constitution guarantees basic rights to all citizens, including inmates
4. Identify if inmates have a constitutional right to be reasonably protected against a constant threat of violence
5. Identify the due process entitlement to inmates
6. Identify what the Eighth Amendment of the constitution provides an inmate
7. Define the term “good Faith”
8. Identify when an inmates phone call is considered a privileged communication
9. Identify what mail may be inspected for contraband
10. Identify the difference between Administrative Segregation and Disciplinary Segregation

CONSTITUTIONAL RIGHTS OF INMATES

Introduction

Earlier in this country's history, individuals convicted of felonies lost all constitutional rights, such as voting and owning property. Today, inmates are not stripped of their constitutional rights upon being incarcerated. The prisoner retains:

1. Those constitutional rights that are not inconsistent with his status as a prisoner.
2. Those constitutional rights that may not be restricted on the basis of important penological concerns such as security.

Access to Courts (Sixth Amendment)

The way to avoid being sued is to follow the Department's Administrative Regulations (ARs). Be aware that some of the ARs are confidential and should never be seen by the public or by inmates, especially the 300 and 400 series.

- ❖ AR 718: Inmate Personal Telephone Usage
- ❖ AR 722: Inmate Legal Access
- ❖ AR 750: Inmate General Correspondence and Mail
- ❖ AR 840: Library Access and Services

A. Three basic components

1. Inmates must be provided access to legal information (ARs 722 and 840).
2. Inmates must not be prevented access to the judicial process.
3. Prison officials may not retaliate or punish prisoners for exercising their right of access.

The first component is satisfied by access to trained legal assistance or law libraries.

B. Officials must respect legal materials.

1. Legal mail cannot be ordinarily read.
2. Legal phone calls cannot be limited (AR 718) but can be monitored initially to make sure they are legal calls. These calls must be collect.
3. Paper Limit: Per AR 722, the state will supply 50 sheets maximum per month to an indigent inmate.
4. Typewriters are not mandated by the ARs. Photocopying is not mandated, but an indigent inmate can be allowed up to \$100 worth of copies.

Communication

This right constitutes speech, religion, and association under the First Amendment to the United States Constitution.

A. Restrictions must further demonstrate important governmental interest and be no greater than necessary.

B. Mail can be read, but only censored if there is an important security breach (AR 750).

1. The Department has the right to inspect all incoming or outgoing general correspondence or mail for contraband per AR 750.
2. Correspondence between incarcerated persons must be approved by the Wardens at both institutions. The U.S. Supreme Court has ruled that all correspondence can be banned to inmates.

3. There is a distinction between privileged and general mail. Privileged mail may be opened and examined, but only in the presence of the inmate.

C. Association with other inmates is easier to restrict. Inmate communication with former inmates or with current inmates at other institutions must be approved by the institution.

D. Visitation restrictions (AR 719)

1. In Nevada, visitation is a privilege, not a right.
2. Visitation from other inmates or former inmates must be approved by the Warden.
3. The Warden decides who is allowed to visit, taking into consideration reasonable penological interest in preventing drugs, weapons, and other contraband from being introduced to the institution.
4. Pat-down searches and use of a metal detector are acceptable.
5. Any other searches must occur pursuant to AR 422, "Search and Shakedown Procedure." Some courts have found it unconstitutional to strip-search based on uncorroborated tips from confidential informants.
6. AR 719 details conditions to visits.

E. Communication with the Media

The inmate has the right, but the institution may place reasonable restrictions on time, location, and manner of the communication.

F. Religious Freedoms

- ❖ AR 809: Native American Religious Activities
- ❖ AR 810: Access to Religious Programs
- ❖ AR 811: Chaplaincy Services
- ❖ AR 812: Worship Services

The religious freedoms are noted in ARs 809, 810, 811, and 812. Inmates must be allowed reasonable opportunity to exercise religion of choice. Any restrictions must be in furtherance of important concerns and reasonable in scope; i.e., the least restrictive method.

Security concerns prohibit sacrificial knives and may restrict the practice or teaching of martial arts. Inmates may use sacred artifacts and texts, but must ask permission for other exceptions.

1. American Indians and others who qualify

- a. Sweat lodge ceremonies
- b. Pipe ceremony
- c. Ceremonial clothing and food

2. Determining Sincere Belief

- a. Did the inmate profess beliefs before incarceration?
- b. Is the inmate's behavior consistent with his belief system?

3. Validity of the Religion

- a. Must generally be a belief in a power or being upon which all else is dependent
- b. Court may not examine the truth or falsity of the faith
- c. If a religion is new, compare its framework to established religions.

Challenges generally arise in questions of food, hygiene, and exercise.

4. Food

Generally, the institution must make a reasonable accommodation for religious dietary requirements, e.g., Muslims, no pork; Orthodox Jews, kosher. There can be alternatives to pork-free diets, and kosher items can be limited due to cost.

5. Hygiene

- a. The policy must apply uniformly to all inmates.
- b. The policy does not prevent inmates from participating in other religious practices.

6. Rights of religious materials and communication with outside religious leaders.

7. Religions must be treated equally.

Unreasonable Search and Seizure (Fourth Amendment)

An inmate's protection from unreasonable searches and seizures is guaranteed under the Fourth Amendment.

- A. Inmates have a reasonable expectation of privacy (AR 422, "Search and Shakedown Procedure").
- B. Institutions can conduct random searches of inmate cells to determine if they contain contraband (*Hudson v. Palmer*).
- C. Institutions may conduct pat searches for any reason (AR 422).
- D. A strip search requires a reasonable belief that the inmate may have unauthorized items or substances on his person. The Warden must implement procedures that are within the guidelines set forth by the ARs. Training is required for all persons on proper methods to conduct such searches.
 - The general rule is that an officer of the same sex as the inmate must conduct the strip search.
 - The strip search must generally be done in a private setting.
 - Generally, officers cannot use force to retrieve contraband from the inmate's mouth, etc.
- E. Exceptions allowed for searches
 - En route to and from court, a visual body cavity search of an inmate.
 - Contact visits
 - Maximum security lockdown and disciplinary detention.
 - Upon persons in disciplinary detention when leaving and re-entering cell.

F. Body Cavity Searches (AR 624, “Body Cavity Searches for Contraband”)

These types of searches have been held to be highly intrusive and humiliating. The Department needs to show legitimate penological need or purpose for searches, which must be conducted in a reasonable manner by qualified medical personnel.

AR 422 states that all employees are responsible for being aware of the controls of the institution’s search procedure. Employees must demonstrate that they are familiar with and have a working knowledge of and have complied with the institution’s post orders, search instructions, and reporting requirements.

Cruel and Unusual Punishment (Eighth Amendment)

Inmates are protected against cruel and punishment, defined as those punishments that are incompatible with the evolving standards of decency that mark the progress of a maturing society; deliberate indifference to inmates’ rights.

A. Good faith

- a. *Whitley v. Albers*, United States Supreme Court, 1986. As long as security measures are taken in good faith, a resulting injury to an inmate does not entail Eighth Amendment violations.

B. The following are types of Eighth Amendment cases:

1. Conditions
2. Lack of appropriate clothing
3. Ventilation
4. Overcrowding
5. Hygiene

6. Assault and battery perpetrated upon an inmate
7. Duty to Protect—If an officer or employee is aware or is told that an inmate's safety is endangered, the officer/employee has the responsibility to inform his supervisor immediately to determine if preventive action needs to be taken.

C. Isolation

An inmate's rights cannot be deprived when placing him in isolation.

D. Medical Issues

Such incidents must be deliberate and indifferent to qualify as cruel and unusual; neglect or malpractice is insufficient cause.

E. Use of Force

See *Whitley v. Albers*, USSC, 1986.

- a. An officer may use force under the following conditions:
 - In self-defense
 - In defense of another, staff or inmate
 - To maintain order or to enforce regulations
 - To prevent escape
 - To prevent a crime.
2. Factors to determine "excessive force":
 - Need for application of force
 - Relationship between the inmate, officer, and amount of force used
 - Extent of injury inflicted

- Whether force was applied in good faith or done so maliciously, unnecessarily, or wantonly
- Extent of threat to the safety of staff and inmate as reasonably perceived by responsible officials on the basis of facts known to them at the time
- Any efforts made to temper the severity of the forceful response
- Use of the Taser not per se constitutional (AR 405, “Use of Force”). Appropriateness of use must be decided by facts and circumstances of each case.

Judge Reed of Reno held it is cruel and unusual punishment to point a Taser at an inmate and threaten to shoot him for inappropriate reasons.

Due Process (Fourteenth Amendment)

The inmate’s right to due process under the law is protected under the Fourteenth Amendment.

A. *Phillips* only applies to NSP. Even if an inmate is transferred from NSP to another institution or camp, *Phillips* only applies to NSP.

B. Administrative Segregation (AR 507) vs. Disciplinary Detention (AR 733)

It is imperative that you read and familiarize yourself with the Code of Penal Discipline (AR 707), which gives prisoners legal rights. Prisoners must be

issued a copy of the Code of Penal Discipline—and they will try to find ways to use it against you.

1. Administrative Segregation (AR 507) is not for punishment. It is administered by the Classification Committee when the continued presence of an inmate in the general inmate population would pose a serious threat to life, property, self, staff, or other inmates, or to the security or orderly running of the institution. Inmates pending investigation for violations of the NDOC Code of Penal Discipline may also be included.
2. No inmate may be arbitrarily placed in administrative segregation, nor may they be placed there longer than is necessary to protect the safety and security of the institution, staff, or other inmates.
3. ***Exception:*** If the Warden, Associate Warden of Operations, or Shift Commander has reasonable cause to believe an inmate is an immediate threat or danger to himself, to others, or to the security of the institution, the inmate may be placed in administrative segregation prior to a hearing.

In such an event, the hearing should be held within three working days after the inmate is placed in segregation. The period may be extended by the Warden. The inmate is entitled to Notice of Extension and reasons therefore. (AR 506, “Reclassification Schedule”)

4. Notice must be given 24 hours prior to the administrative segregation hearing. The inmate should be given a Notice of Classification, NDOC Form 2003 (attached to AR 507). The inmate must have a classification hearing within 3 working days, and three impartial members must be in attendance.

Decisions to put inmates into administrative segregation must be reviewed frequently. Administrative segregation units will not be used as a substitute for mental health facilities.

5. Exceptions

While there are exceptions, as a general rule an inmate is entitled to his property. Any restrictions on an inmate's property must be recorded with reasons therefore. Restrictions should be approved in advance by the Warden or Associate Warden of Operations.

The segregation unit log should state the continuing justification and unit supervisor's approval for the continuation of such restrictions at least every other day.

Any inmate for whom a significant restriction of property has been ordered must be referred to a psychiatrist within 24 hours of the Warden's decision to limit said property rights.

If an inmate commits a violation of the rules while in administrative segregation, he is entitled to all the protections of the disciplinary segregation process unless security of the unit dictates otherwise. The

following guidelines are offered for management of administrative segregation inmates. They should be:

- Permitted all of their personal property
- Fed the same food and rations as in the general population
- Allowed the same correspondence privileges
- Allowed the same contact visits
- Provided with the means to keep themselves clean and well-groomed
- Provided a minimum of 10 hours per week of outdoor exercise
- Afforded the same canteen privileges as the general population
- Allowed to participate in institutional/facility games
- Assigned law clerks, who shall visit the unit 4 times per week to assist inmates, and make law books and legal supplies available
- Assigned a counselor to help inmates
- Allowed mandatory visitation by religious personnel
- Given medical access. If an inmate complains of or exhibits an apparent medical, dental, or psychological problem, the officers in charge of the unit shall be notified and shall then notify the medical staff. Such notification and action must be documented in the unit log.
- A systematic record system should be maintained on all inmates assigned to the administrative segregation unit.

Summary of Administrative Segregation: Review of key elements

1. Administrative segregation is not for punishment.
2. Inmates should only be placed into administrative segregation by a Classification Committee. Inmates are entitled to a Notice of Hearing and all protections afforded inmates as set out in AR 507; i.e., Notice of Hearing with reasons; witnesses; inmate staff counsel present; and Miranda rights if faced with criminal charges.
3. Inmates may be put into administrative segregation without a hearing if he is a security threat as determined by the Warden, Associate Warden of Operations, or Shift Commander. In such an event, the Classification Committee should hold its hearing within 3 days.
4. Generally, an inmate is entitled to have all his property and other privileges.

Disciplinary Segregation

Disciplinary segregation is for punishment under AR 733.

Do not put an inmate into disciplinary segregation detention without following the procedures set forth in the NDOC Code of Penal Discipline (AR 707).

An inmate may not be placed into disciplinary detention except by order of a Disciplinary Committee.